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09/749,605	12/28/2000	Donald G. LeBlanc	US 1233/00	4813

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EXAMINER

PATEL, JAGDISH

ART UNIT PAPER NUMBER

3624

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/749,605

Applicant(s)

LEBLANC, DONALD G.

Examiner

JAGDISH PATEL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05/22/2001.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **Claim Rejections - 35 USC § 101**

**1. 35 U.S.C. 101 reads as follows:**

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**2. Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 18 is rejected under 35 USC § 101 because the claimed inventions are directed to non-statutory subject matter. Claim 18 is directed to disembodied data structure which are per se are not statutory (*In re Warmerdam*, No. 93-1294 (Fed. Cir. August 11, 1994)). The examiner suggests to redraft the claims to include a computer-readable medium so that the claimed software in combination with a computer-readable medium will be capable of producing a useful, concrete and tangible result. A claim to a computer-readable medium encoded with functional descriptive material that can function with a computer to effect a practical application that results in a useful, concrete and tangible result (i.e. executing a stock transaction or generating an investment portfolio) satisfies section 101. See U.S. Patent 5,710,578 to Beauregard et al.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1-17 recites a single means (a server coupled to a network).

Independent claim 1 recites a “network-based” system. However, the only element of the system recited is a server coupled to a network. The system does not positively recite the network and the user stations as component of the system which renders the system claim as a single means claim.

A single means claim, i.e., where a means recitation does not appear in combination with another recited element of means, is subject to an undue breadth rejection under **35 U.S.C. 112**, first paragraph. In re Hyatt, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983) (A single means claim which covered every conceivable means for achieving the stated purpose was held nonenabling for the scope of the claim because the specification disclosed at most only those means known to the inventor.). When claims depend on a recited property, a fact situation comparable to Hyatt is possible, where the claim covers every conceivable structure (means) for achieving the stated property (result) while the specification discloses at most only those known to the inventor.

4. The following is a quotation of the second paragraph of **35 U.S.C. 112**:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1 is in improper form for the following reasons:

The claim is directed to a “network-based system for trading commodities”, the only element of the system being a server coupled to a network. The system claim is indefinite because it fails to recite all requisite elements to form a complete functional system. For example, the claimed system refers to “said network”, “said user stations” without positively reciting these elements as part of the system structure.

Dependent claims 2-9 also inherit this deficiency.

Similar analysis also renders independent claim 10 and dependent claims 11-17 in improper form and therefore rendered indefinite.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-6, 8, 9, 10-11, 15-18 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Tolz (WO 00/43933 A1).

Per Claim 1, Tolz discloses a network-based system for trading physical commodities in real-time, said system comprising:

(a) a server coupled to a network; (web-server running an on-line auction, the web-server 20 is connected the "public Internet", see Figure 1(a), see also pertinent description on p. 7)

(b) said network including a plurality of ports for coupling user stations to said network for communicating with said server;

(the network shown in Fig. 1(a) has associated with it a plurality of ports whereby user stations 12a-c are communicating to the web-server)

(c) said server including a component for generating a trading board, said trading board comprising posted offers for a physical commodity and said trading board being referenced to a trading zone, wherein said trading zone comprises a geographic area having one or more suppliers of the physical commodity and one or more potential buyers of said physical commodity, and

said server including a component for sending said trading board to one or more of said user stations coupled to said network;

(refer to detailed flow diagrams presented in Figures 2(a)-(b), 3(a)-(b) and 4 in conjunction with detailed description on p. 7-15. Note the trading board is shown in the form of a web page on a web browser which facilitate trading of the goods with the suppliers (sellers) who have posted offers within a trading zone specified by a potential buyer, see in particular Figure 4)

(d) said user stations including a display component for displaying said trading boards, and further including a component for accepting a posted offer on said trading board and communicating said acceptance to said server.

(refer to Figure 4 which depicts display of trading board for accepting a posted offer)

Claim 2: The network-based system as claimed in claim 1, wherein said user stations include a component for posting bids for the physical commodity on said trading board.  
(Figure 4, and p. 11 and 12)

Claim 3: The network-based system as claimed in claim 2, further including a freight rate mechanism, said freight rate mechanism including a component for adjusting a posted offer on a delivered basis for buyers, and a component for adjusting the posted bid on a delivered to trading zone basis for suppliers.

(see Figure 3(b) (1), blocks 182-190 as appropriate)

Claim 4: The network-based system as claimed in claim 3, wherein said network comprises the Internet and World Wide Web.

(see Figure 1)

Claim 5: The network-based system as claimed in claim 2, wherein said server includes a database for storing information related to said posted offers and said posted bids, and wherein said trading board displayed on said user stations includes an update component for accessing and receiving said information from said database over said network and displaying said information at the user stations.

(see Figure 1(a) items 18a-c in view of description provided on p. 7 and 8)

Claim 6: The network-based system as claimed in claim 5, wherein said trading board includes a graph component, said graph component including a graphical view selectively displayable on said user station, and said graph component including a component for receiving current information from said database for updating said graphical view.

(refer to GUI 21 downloaded to a buyers shown in Figure 4, which is updated by web page functions as desired)

Claim 8: The network-based system as claimed in claim 6, wherein said graphical view comprises a graphical mapping of the number of posted offers and posted bids versus price per offer and bid.

(refer to Figure 4, bids information)

Claim 9: The network-based system as claimed in claim 3, wherein said server includes a regional transportation database for storing a plurality of supplier regions, a plurality of buyer

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regions, and a plurality of said trading zones, and each of said supplier and said buyer regions and said trading zones having a

defined geographic center for use by said freight rate mechanism.

(see p. 16, currently available shipping information which is based on the buyers and sellers and the shippers locations in the region of shipping of goods)

All limitations of claims 10-11, 15-18 have been analyzed as being anticipated by Tolz in view of above analysis of claims 1-6, 8 and 9.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tolz.

Claim 7: Tolz further doesn't expressly show that the graphical view comprises a graphical mapping of transaction prices for the physical commodities over time.

Tolz does not expressly show that the graphical view as comprising a graphical mapping of transaction prices.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The collecting and e-mailing steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish



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the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983), *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the graphical view having a graphical mapping of transaction prices for the commodities over time because such data does not functionally relate to the functions recites in the system claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Claims 12-14: Tolz teaches a net-work based system for trading physical commodities in real-time as per claim 10 as discussed in the foregoing section. Tolz, however fails to teach features of claims 12-14 such as rating potential suppliers, setting a time duration of the bid remaining open, setting a time duration and specifying a future delivery date of item of commodity associated with the bid.

However, official notice is taken that these features concerning network based auctions are old and well known. These features are essential for successful implementation and execution of any auction process where physical goods or commodities are being auctioned. For example, since in most part the suppliers of goods or commodities are not known to the potential purchasers it is extremely useful for the purchasers to know the reliability and reputation of the suppliers (i.e. rating of the suppliers). Likewise, it is a basic requirement for an auction manager to inform the potential bidders about the duration of any specific commodity being auctioned. It

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is also essential to a bidder to know whether a commodity being auctioned can be delivered in a preferred time frame.

7. In consideration of the aforementioned benefits of the recited features, it would have been obvious to one of ordinary skill in the art to implement these feature in Tolz system.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (703)308-7837. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703)308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

11/29/04